

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

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Paper No. 28

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte HAE-WON AHN

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Appeal No. 2001-1982  
Application 08/892,716<sup>1</sup>

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HEARD: September 19, 2002

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Before BARRETT, DIXON, and LEVY, Administrative Patent Judges.  
BARRETT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the final rejection of claims 1-14.

We reverse but enter a new ground of rejection.

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<sup>1</sup> Application for patent filed July 15, 1997, entitled "Monitor Front Case With Gate Landings," which claims the foreign filing priority benefit under 35 U.S.C. § 119 of Republic of Korea Application 96-21080, filed July 16, 1996, and Republic of Korea Application 97-13466, filed June 5, 1997.

BACKGROUND

The invention relates to a front case for monitors having injection molding gate landings on a cathode ray tube (CRT) seating surface. Each gate landing is recessed so that the gate flash is fully recessed below the seating surface to avoid an interference between the gate flash and the CRT. This removes an extra flash grinding step in the manufacturing process.

Claim 1 is reproduced below.

1. A front case for monitors, comprising:

a gate landing formed on a CRT seating surface of said front case at a position around a gate flash remaining on the case due to a gate of an injection mold used in an injection molding process of the case, said gate landing being depressed to a depth suitable for fully recessing the gate flash and avoiding an interference between the gate flash and a cathode ray tube.

The examiner relies on the following references:

Boudreau et al. (Boudreau)	5,565,934	October 15, 1996 (filed February 5, 1992)
Arai et al. (Arai)	5,591,385	January 7, 1997 (filed December 21, 1994)

Claims 1-14 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Boudreau and Arai. The rejection is set forth in the second Office action (Paper No. 7).

We refer to the Office action (Paper No. 7), the final rejection (Paper No. 9), and the examiner's answer (Paper No. 19) for a statement of the examiner's rejection, and to the appeal brief (Paper No. 18) (pages referred to as "Br\_\_") and reply

brief (Paper No. 24) (pages referred to as "RBr\_\_") for a statement of appellant's arguments thereagainst.

OPINION

Appellant argues in the briefs: (1) the references do not provide the motivation to combine the two references and the rationale for combining the references is nonexistent (Br5-7; RBr4-7); (2) the examiner failed to make specific findings on the level of ordinary skill in the art (Br7-8; RBr2-4); (3) the rejection is defective for failing to provide a sufficient factual analysis (Br8-10; RBr7-9). The main brief barely touches the teachings of the references or the claimed subject matter and, indeed, appellant states that "[f]or purposes of this appeal, which involves procedural and administrative law issues, the technical details of Ahn's invention are not central to the outcome" (Br2). We have seen these same boilerplate arguments in other briefs and are left with the impression that the arguments would be made regardless of what the rejection said. These arguments do not persuade us of error in the rejection.

By contrast, at the oral hearing, counsel for appellant cut right to the merits and honed in on claim 1's limitation of "a gate landing formed on a CRT seating surface of said front case" (emphasis added). It was argued that Boudreau does not teach this limitation and the combination with Arai would not teach the limitation. This agrees with our own analysis of the claims and

references. If the same argument had been presented in the briefs, it is likely that we would not have seen this appeal. While we are reluctant to consider new arguments made for the first time at the oral hearing, we believe that the examiner's rejection is defective and could not withstand judicial review.

The examiner has found an excellent secondary reference in Arai to show recessing the gate landing and gate flash protrusion below the surface so that the surface can be abutted with a mating surface by surface contact. The examiner also correctly points out that Arai teaches that the injection molding techniques are applicable to CRTs. The error in the rejection is that Boudreau does not teach "a gate landing formed on a CRT seating surface of said front case," as recited in claim 1. The molded bezel 20 in Boudreau has "gate landings" at the location of the sprue holes 62, 64 in figure 5; however, these locations are not on a "CRT seating surface" as claimed. The CRT does not mate with the molded bezel at these locations. Assuming that the molded assembly of the CRT 12 and the molded bezel 20 together was considered a CRT, and that the rear housing 14 could be termed a "front case," the housing 14 does not seat on the surface having the gate landings. The housing 14 has an extended portion 34 which fits into a circumferential indentation 28 on bezel 20 (figure 4) which is formed by mold inserts 44, 46 (figure 5). Because the gate flash at the sprue holes 62, 64 in

Boudreau does not interfere with any mating surface, much less with the CRT, there is no motivation for recessing the gate flashing. However, even if the gate flashing were recessed just because it could be recessed in view of Arai, Boudreau would still not meet the limitation of "a gate landing formed on a CRT seating surface of said front case." The same limitation is found in slightly different words in all of the independent claims. Accordingly, we conclude that the examiner has failed to establish a prima facie case of obviousness and the rejection of claims 1-14 is reversed.

NEW GROUND OF REJECTION UNDER 37 CFR § 1.196(b)

Claims 1-14 are rejected under 35 U.S.C. § 103(a) as being unpatentable over appellant's admitted prior art (APA) and Arai.

The APA is shown in figures 1-3 and described in the specification at page 1, line 17, to page 2, line 4, and page 3, line 11, to page 4, line 15.<sup>2</sup> The APA discloses that a housing for a cathode ray tube (CRT) made by injection molding often contains flash protrusions on the surface. If these gate flash protrusions protrude from a seating surface where a CRT is

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<sup>2</sup> As discussed at the oral hearing, we interpret the specification as admitting that the subject matter of figures 1, 2A, and 2B is prior art to appellant. Counsel for appellant stated that he will inquire of appellant whether this is actually prior art and, if not, will make the appropriate clarification.

mounted, there will not be a snug fit between the housing and the CRT, which allows foreign substances such as dust to enter the monitor through the gap between the CRT and the seating surface. Thus, the APA discloses that gate landings are formed on a CRT seating surface of a housing and that such flash protrusions at the gate landings cause the problem that the seating surface does not fit snugly with the CRT. The APA discloses that the problem of fit is eliminated by grinding back the protrusion, which requires an extra step in the manufacturing process.

Arai discloses, in connection with figures 40 and 41  
(col. 23, lines 14-30):

[U]pon molding, a groove portion 115A which is recessed inside is formed in a surface of a portion of a molded article 38A which is contiguous to the gate 39 of the hot runner 40. . . . Since a gate slug 39A formed in the gate 39 of the hot runner 40 will not project upward above a surface 38A-2 of the molded article, the mating article can be abutted with each other by surface contact.

The motivation for recessing the gate landing and gate slug is stated in the last sentence: so that a mating surface can be abutted by surface contact. Arai further discloses that the product can be a CRT or any product made by injection molding  
(col. 26, lines 34-39).

With respect to independent claims 1, 2, and 6, the APA does not teach the gate landing being recessed to a depth for fully recessing the gate flash to avoid interference between the gate

flash and the CRT and allow the seating surface to fit snugly against the CRT. The dependent claims are discussed separately.

The APA and Arai are representative of the level of ordinary skill in the art. See In re Oelrich, 579 F.2d 86, 91, 198 USPQ 210, 214 (CCPA 1978) ("the PTO usually must evaluate both the scope and content of the prior art and the level of ordinary skill solely on the cold words of the literature"); In re GPAC Inc., 57 F.3d 1573, 1579, 35 USPQ2d 1116, 1121 (Fed. Cir. 1995) (the Board did not err in adopting the approach that the level of skill in the art was best determined by the references of record); Okajima v. Bourdeau, 261 F.3d 1350, 1355, 59 USPQ2d 1795, 1797 (Fed. Cir. 2001) ("[T]he absence of specific findings on the level of skill in the art does not give rise to reversible error 'where the prior art itself reflects an appropriate level and a need for testimony is not shown.'"). In addition, we find that one of ordinary skill in the manufacturing art would have known that it was desirable to design articles to eliminate manufacturing steps.

One of ordinary skill in the art, facing the problem in the APA that flash protrusions on the seating surface of a housing where a CRT is mounted are undesirable because they interfere with close mating contact, would have been motivated by the solution to this general problem in Arai to recess the gate landings to recess the flash protrusion below the seating surface

as recited in independent claims 1, 2, and 6. The motivation for the combination is found in the nature of the fit problem to be solved in the APA and the teaching of a solution to the problem in Arai. The motivation to recess the gate landing and the gate flash protrusion is also found in Arai's general teaching of this feature and the teaching that the techniques can be used with any injection molded product, include CRT products. An express suggestion is not required to support an obviousness conclusion. See In re Oetiker, 977 F.2d 1443, 1447-48, 24 USPQ2d 1443, 1446-47 (Fed. Cir. 1992) (Nies, C.J., concurring). That is, Arai need not specifically state that the recess technique be used to recess gate landings formed on a CRT seating surface. A still further motivation for making the combination would have been the person of ordinary skill in the art's knowledge that it would have been desirable to incorporate a recessed gate landing as taught in Arai to eliminate the need for grinding in the APA; this is the only motivation that relies on a finding of level of skill in the art outside of what is shown in the references.

As to dependent claim 3, both the APA and Arai discuss injection molding. As to dependent claims 4, 8, 10, and 12, the incorporation of a recessed gate flash protrusion as taught by Arai into the APA would be oriented toward the CRT as in the APA, but would not make contact with it because of the recess. As to dependent claims 5, 7, and 13, the combination of the APA with

the recessed gate flash protrusion of Arai would eliminate the need for a flash protrusion grinding step. As to dependent claims 9, 11, and 14, the combination of the APA with the recessed gate flash protrusion of Arai would have a snug fit between the front case and monitor that prevents dust and dirt from entering the space; the APA discloses that a snug fit is desirable to prevent the entry of dust and dirt.

#### CONCLUSION

The rejection of claims 1-14 is reversed.

A new ground of rejection has been entered against claims 1-14 pursuant to 37 CFR § 1.196(b).

This decision contains a new ground of rejection pursuant to 37 CFR § 1.196(b) (amended effective Dec. 1, 1997, by final rule notice, 62 Fed. Reg. 53,131, 53,197 (Oct. 10, 1997), 1203 Off. Gaz. Pat. & Trademark Office 63, 122 (Oct. 21, 1997)). 37 CFR § 1.196(b) provides that, "A new ground of rejection shall not be considered final for purposes of judicial review."

37 CFR § 1.196(b) also provides that the appellant, WITHIN TWO MONTHS FROM THE DATE OF THE DECISION, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of proceedings (§ 1.197(c)) as to the rejected claims:

(1) Submit an appropriate amendment of the claims so rejected or a showing of facts relating to the claims so rejected, or both, and have the matter

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reconsidered by the examiner, in which event the  
application will be remanded to the examiner. . . .

(2) Request that the application be reheard under  
§ 1.197(b) by the Board of Patent Appeals and  
Interferences upon the same record. . . .

No time period for taking any subsequent action in  
connection with this appeal may be extended under 37 CFR  
§ 1.136(a).

REVERSED - 37 CFR § 1.196(b)

LEE E. BARRETT	)	
Administrative Patent Judge	)	
	)	
	)	
	)	
JOSEPH L. DIXON	)	BOARD OF PATENT
Administrative Patent Judge	)	APPEALS
	)	AND
	)	INTERFERENCES
	)	
	)	
STUART S. LEVY	)	
Administrative Patent Judge	)	

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